



*Maryland Department of Planning
Maryland Historical Trust*

*Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor*

*Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary*

Selected Maryland Statutes Related to Human Remains, Burials, and Cemeteries

Compiled by the Maryland Historical Trust

July 2011

This includes selected titles from the Annotated Code of Maryland related to the treatment of human remains, burial sites, and cemeteries for educational purposes only. While the Maryland Historical Trust has made every effort to include all relevant sections of the applicable statutes, this document should not be construed as being exhaustive or comprehensive. Readers are advised to conduct their own research on burial law and regulations and/or consult legal counsel.

This document is provided by the Maryland Department of Planning for reference purposes only. Statutes and Regulations may change as a result of legislative action, so users are advised to consult the most current version of the Maryland Code available from the Maryland Department of Legislative Services at:

<http://www.mlis.state.md.us/>.



Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

CODE OF MARYLAND

Criminal Law Article

TITLE 10. CRIMES AGAINST PUBLIC HEALTH, CONDUCT, AND SENSIBILITIES

Subtitle 4. Crimes Relating to Human Remains

§ 10-401. Definitions.

(a) *In general.*- In this subtitle the following words have the meanings indicated.

(b) *Associated funerary object.*

- (1) "Associated funerary object" means an item of human manufacture or use that is intentionally placed:
 - (i) with human remains at the time of interment in a burial site; or
 - (ii) after interment, as a part of a death ceremony of a culture, religion, or group.
- (2) "Associated funerary object" includes a gravestone, monument, tomb, or other structure in or directly associated with a burial site.

(c) *Burial site.*-

- (1) "Burial site" means a natural or prepared physical location, whether originally located below, on, or above the surface of the earth, into which human remains or associated funerary objects are deposited as a part of a death ceremony of a culture, religion, or group.
- (2) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are left intentionally to remain at the site.

(d) *Permanent cemetery.*- "Permanent cemetery" means a cemetery that is owned by:

- (1) a cemetery company regulated under Title 5 of the Business Regulation Article;
- (2) a nonprofit organization; or
- (3) the State.

§ 10-402. Removing human remains without authority.

(a) *Prohibited.*- Except as provided in subsection (b) of this section, a person may not remove or attempt to remove human remains from a burial site.

Criminal Law Article

Title 10. Crimes Against Public Health, Conduct, and Sensibilities

Subtitle 4. Crimes Relating to Human Remains

Page 2 of 5

(b) *Exception.*- Subject to subsection (c) of this section, the State's Attorney for a county may authorize in writing the removal of human remains from a burial site in the State's Attorney's jurisdiction:

- (1) to ascertain the cause of death of the person whose remains are to be removed;
- (2) to determine whether the human remains were interred erroneously;
- (3) for the purpose of reburial; or
- (4) for medical or scientific examination or study allowed by law.

(c) *Same* - Notice.-

- (1) Except as provided in paragraph (4) of this subsection, the State's Attorney for a county shall require a person who requests authorization to relocate permanently human remains from a burial site to publish a notice of the proposed relocation in a newspaper of general circulation in the county where the burial site is located.
- (2) The notice shall be published in the newspaper one time.
- (3) The notice shall contain:
 - (i) a statement that authorization from the State's Attorney is being requested to remove human remains from a burial site;
 - (ii) the purpose for which the authorization is being requested;
 - (iii) the location of the burial site, including the tax map and parcel number or liber and folio number; and
 - (iv) all known pertinent information concerning the burial site, including the names of the persons whose human remains are interred in the burial site, if known.
- (4)
 - (i) The State's Attorney may authorize the temporary relocation of human remains from a burial site for good cause, notwithstanding the notice requirements of this subsection.
 - (ii) If the person requesting the authorization subsequently intends to relocate the remains permanently, the person promptly shall publish notice as required under this subsection.
- (5) The person requesting the authorization from the State's Attorney shall pay the cost of publishing the notice,
- (6) The State's Attorney may authorize the removal of the human remains from the burial site after:
 - (i) receiving proof of the publication required under paragraph (1) of this subsection; and
 - (ii) 15 days after the date of publication.
- (7) This subsection may not be construed to delay, prohibit, or otherwise limit the State's Attorney's authorization for the removal of human remains from a burial site.
- (8) For a known, but not necessarily documented, unmarked burial site, the person requesting authorization for the removal of human remains from the burial site has the burden of proving by archaeological excavation or another acceptable method the precise location and boundaries of the burial site.

(d) *Same* - Reinterment.

- (1) Any human remains that are removed from a burial site under this section shall be reinterred in:
 - (i) 1. a permanent cemetery that provides perpetual care; or
 2. a place other than a permanent cemetery with the agreement of a person in interest as defined under § 14-121(a)(4) of the Real Property Article; and

(ii) in the presence of:

1. a mortician, professional cemeterian, or other individual qualified in the interment of human remains;
2. a minister, priest, or other religious leader; or
3. a trained anthropologist or archaeologist.

(2) The location of the final disposition and treatment of human remains that are removed from a burial site under this section shall be entered into the local burial sites inventory or, if no local burial sites inventory exists, into a record or inventory deemed appropriate by the State's Attorney or the Maryland Historical Trust.

(e) *Construction of section.*- This section may not be construed to:

- (1) preempt the need for a permit required by the Department of Health and Mental Hygiene under § 4-215 of the Health-General Article to remove human remains from a burial site; or
- (2) interfere with the normal operation and maintenance of a cemetery, as long as the operation and maintenance of the cemetery are performed in accordance with State law.

(f) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(g) *Statute of limitations and in banc review.*- A person who violates this section is subject to § 5-106(b) of the Courts Article.

§ 10-403. Removal of human remains or funerary object.

(a) *Scope of section.*- This section does not apply to:

- (1) a person acting in the course of medical, archaeological, educational, or scientific study;
- (2) a licensed mortician or other professional who transports human remains in the course of carrying out professional duties; or
- (3) a person acting under the authority of:
 - (i) § 10-402 of this subtitle; or
 - (ii) § 4-215 or § 5-408 of the Health-General Article.

(b) *Prohibited.*- A person may not knowingly sell, buy, or transport for sale or profit, or offer to buy, sell, or transport for sale or profit:

- (1) unlawfully removed human remains; or
- (2) an associated funerary object obtained in violation of § 10-404 of this subtitle.

(c) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both.

(d) *Appropriation and disposition.*- The Maryland Historical Trust may appropriate all human remains and associated funerary objects obtained in violation of this subtitle for management, care, and administration until a determination of final disposition as provided by law.

(e) *Construction of section.*- This section may not be construed to interfere with the normal operation and maintenance of a cemetery including:

- (1) correction of improper burial siting; and
- (2) moving the human remains within a cemetery with the consent of a person who qualifies as an heir as defined in § 1-101 of the Estates and Trusts Article.

§ 10-404. Cemetery - Destroying funerary objects; indecent conduct.

(a) *Prohibited - Destruction of funerary object; exception for repair or replacement.*-

(1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, deface, or remove:

- (i) an associated funerary object or another structure placed in a cemetery; or
- (ii) a building, wall, fence, railing, or other work, for the use, protection, or ornamentation of a cemetery.

(2) The provisions of paragraph (1) of this subsection do not prohibit the removal of a funerary object or a building, wall, fence, railing, or other object installed for the use, protection, or ornamentation of a cemetery or burial site, for the purpose of repair or replacement, either at the request of or with the permission of heirs or descendants of the deceased or the owner or manager of the cemetery or burial site.

(b) *Same - Destruction of foliage; exception for routine care and maintenance.*-

(1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, or remove a tree, plant, or shrub in a cemetery.

(2) The provisions of paragraph (1) of this subsection do not prohibit normal maintenance of a cemetery or burial site, including trimming of trees and shrubs, removal of weeds or noxious growths, grass cutting, or other routine care and maintenance.

(c) *Same - Indecent or disorderly conduct.*- A person may not engage in indecent or disorderly conduct in a cemetery.

(d) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

- (1) for a violation of subsection (a) of this section, imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and
- (2) for a violation of subsection (b) or (c) of this section, imprisonment not exceeding 2 years or a fine not exceeding \$500 or both.

(e) *Construction of section.*- This section does not prohibit the removal of human remains or a funerary object from an abandoned cemetery if:

Criminal Law Article

Title 10. Crimes Against Public Health, Conduct, and Sensibilities

Subtitle 4. Crimes Relating to Human Remains

Page 5 of 5

- (1) the removal is authorized in writing by the State's Attorney of the county in which the cemetery containing the human remains or funerary object is located; and
- (2) the human remains or funerary object are placed in an accessible place in a permanent cemetery.

[An. Code 1957, art. 27, § 267(b)-(d); 2002, ch. 26, § 2; 2003, ch. 21, § 1; 2005, ch. 208; 2006, ch. 38.]



*Maryland Department of Planning
Maryland Historical Trust*

*Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor*

*Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary*

CODE OF MARYLAND

Health – General Article

TITLE 4. STATISTICS AND RECORDS

Subtitle 2. Vital Statistics and Records

§ 4-215. Burial permits, final disposition, transportation, and disinterment.

(a) *"Cemetery" defined.*- In this section, "cemetery" includes a crematory or other place for final disposition.

(b) *Burial-transit permit required.*-

- (1) Within 72 hours after death or after delivery in a fetal death and before final disposition or removal of the body or fetus from this State, the mortician who first takes custody of the body or fetus shall obtain a burial-transit permit.
- (2) If the death or fetal death certificate is on a multicopy form, one copy of which is designated specifically as a "burial-transit permit" and is signed by the attending physician or medical examiner, that copy shall provide for the later entry of final disposition information and serves as a burial-transit permit.

(c) *Duty of person in charge of cemetery.*-

- (1) A person in charge of a cemetery may not permit the final disposition of a body or fetus unless it is accompanied by a burial-transit permit.
- (2) The person in charge of a cemetery shall:
 - (i) Write on the permit the date of final disposition;
 - (ii) Sign the permit; and
 - (iii) Within 10 days after final disposition, return the permit to the Secretary.
- (3) If there is no person in charge of the cemetery, the mortician shall fill out the burial-transit permit.

(d) *Permit is authority throughout State.*- A burial-transit permit issued by any state or a foreign country is sufficient authority for transit through this State or final disposition in any cemetery in this State.

(e) *Permit for disinterment and reinterment; inspection of permit record.*-

- (1) A permit for disinterment and reinterment is required before the disinterment of human remains if reinterment is not to be made in the same cemetery. The Secretary or a health officer shall issue the permit after receipt of an application on the form that the Secretary requires.

Health – General Article

Title 4. Statistics and Records

Subtitle 2. Vital Statistics and Records

§ 4-215. Burial permits, final disposition, transportation, and disinterment.

Page 2 of 2

- (2) If all human remains in a cemetery are to be disinterred for purposes of relocation or abandonment of the cemetery, one application is sufficient for that purpose.
- (3) The Department shall keep a record of each permit issued for the disinterment and reinterment of human remains.
- (4) Except as provided in paragraph (5) of this subsection, the Department may not disclose or allow public inspection of information in a permit record about the location of the site of a disinterment or reinterment if a local burial sites advisory board or the Director of the Maryland Historical Trust determines that:
 - (i) The site is historic property, as defined in Article 83B, § 5-601 of the Code; and
 - (ii) Disclosure would create a substantial risk of harm, theft, or destruction to the site.
- (5) The Department may not deny inspection of a permit record to:
 - (i) The owner of the site of the disinterment or reinterment;
 - (ii) A governmental entity that has the power of eminent domain; or
 - (iii) The spouse, next of kin, or appointed personal representative of the deceased whose human remains have been disinterred or reinterred



*Maryland Department of Planning
Maryland Historical Trust*

*Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor*

*Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary*

CODE OF MARYLAND

Real Property Article

TITLE 14. MISCELLANEOUS RULES

Subtitle 1. Miscellaneous Rules

§ 14-121. Burial sites - Access.

(a) Definitions.-

- (1) In this section the following words have the meanings indicated.
- (2)
 - (i) "Burial site" means any natural or prepared physical location, whether originally located below, on, or above the surface of the earth into which human remains or associated funerary objects are deposited as a part of a death rite or ceremony of any culture, religion, or group.
 - (ii) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are intentionally left to remain at the site.
- (3) "Cultural affiliation" means a relationship of shared group identity that can be reasonably traced historically between a present-day group, tribe, band, or clan and an identifiable earlier group.
- (4) "Person in interest" means a person who:
 - (i) Is related by blood or marriage to the person interred in a burial site;
 - (ii) Has a cultural affiliation with the person interred in a burial site; or
 - (iii) Has an interest in a burial site that the Office of the State's Attorney for the county where the burial site is located recognizes is in the public interest after consultation with a local burial sites advisory board or, if such a board does not exist, the Maryland Historical Trust.

(b) Request for access - Restoration, maintenance or viewing.- Any person in interest may request the owner of a burial site or of the land encompassing a burial site that has been documented or recognized as a burial site by the public or any person in interest to grant reasonable access to the burial site for the purpose of restoring, maintaining, or viewing the burial site.

(c) Same - Agreements.-

- (1) A person requesting access to a burial site under subsection (b) or (d) of this section may execute an agreement with the owner of the burial site or of the land encompassing the burial site using a form similar to the form below:

"Permission to Enter

I hereby grant the person named below permission to enter my property, subject to the terms of the agreement, on the following dates:

Signed _____

(Landowner)

Agreement

Real Property Article

Title 14. Miscellaneous Rules

Subtitle 1. Miscellaneous Rules

Page 2 of 3

In return for the privilege of entering on the private property for the purpose of restoring, maintaining, or viewing the burial site or transporting human remains to the burial site, I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

Signed"

(2) The owner of the burial site or of the land encompassing the burial site may grant access to the burial site in accordance with the terms of the agreement signed under paragraph (1) of this subsection.

(d) Same - Interments.- In addition to the provisions of subsection (b) of this section, if burials are still taking place at a burial site, any person who is related by blood or marriage, heir, appointed representative, or any other person in interest may request the owner of the land encompassing the burial site to grant reasonable access to the burial site for the purpose of transporting human remains to the burial site to inter the remains of a person for whose burial the site is dedicated, if access has not been provided in a covenant or deed of record describing the metes and bounds of the burial site.

(e) Liability of owner.- Except for willful or malicious acts or omissions, the owner of a burial site or of the land encompassing a burial site who allows persons to enter or go on the land for the purposes provided in subsections (b) and (d) of this section is not liable for damages in a civil action to a person who enters on the land for injury to person or property.

(f) Reporting location to Supervisor of Assessments; notation on tax maps.-

(1) An owner of a burial site, a person who is related by blood or marriage to the person interred in a burial site, heir, appointed representative, or any other person in interest, or any other person may report the location of a burial site to the supervisor of assessments for a county, together with supporting documentation concerning the location and nature of the burial site.

(2) The supervisor of assessments for a county may note the presence of a burial site on a parcel on the county tax maps maintained under § 2-213 of the Tax-Property Article.

(g) Scope of section.- Nothing in this section may be construed to interfere with the normal operation and maintenance of a public or private cemetery being operated in accordance with State law.

[1994, ch. 203.]

§ 14-122. Same - County or municipal maintenance; funding.

(a) Definition.- In this section, "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth into which human remains are deposited as a part of a death rite or ceremony of any culture, religion, or group.

(b) County or municipal maintenance.- Any county or municipal corporation that has within its jurisdiction a burial site in need of repair or maintenance may, upon the request of the owner or with permission of the owner of the burial site in need of repair or maintenance, maintain and preserve the burial site for the owner.

(c) Funding.- In order to maintain and preserve a burial site or to repair or restore fences, tombs, monuments, or other structures located in a burial site, a county or municipal corporation may:

(1) Appropriate money and solicit donations from individuals or public or private corporations;

(2) Provide incentives for charitable organizations or community groups to donate their services; and

(3) Develop a community service program through which individuals required to perform community service hours under a sentence of a court or students may satisfy community service requirements or volunteer their services.

[1994, ch. 203.]



Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

CODE OF MARYLAND

Article 66B – Land Use

TITLE 5. SUBDIVISION CONTROL

Subtitle 3. Regulations

§ 5.03. Regulations

(d) Easements for burial sites

- (1) Regulations governing the subdivision of land shall require that an appropriate easement be provided for any burial site located on the land.
- (2) The easement shall be subject to the subdivision plat for entry to and exit from the burial site by persons related by blood or marriage or persons in interest, as defined in § 14-121 of the Real Property Article.
- (3) The existing right-of-way need not be extended for any improvements on the burial site.